IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 271 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SARJUNSINH DEVNATHSING CHANDRAVANSHI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
THROUGH JAIL for Appellant(s) : 1,MR G RAMAKRISHNAN for Appellant(s) : 1,
MR AJ DESAI, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 24/04/2007

ORAL JUDGMENT

1. The appellant is the original accused of Special (NDPS) Case No.4/1999. After trial, the ld. Special Judge, Surat held the appellant accused guilty of the

charge for the offence punishable under section 8(c) R/w section 20(1)(i) of Narcotic Drugs & Psychotropic Substances Act,1985 (hereinafter referred to as the NDPS Act), vide impugned judgment dated 06.03.2000. This appeal was listed for final hearing before this Bench in the month of March 2007 and at one point of time, it transpired that the accused perhaps has jumped the bail. The exercise to trace the surety and accused has been undertaken by the respondent State in compliance with the order passed by the Court on all subsequent dates of hearing. The Police reported to the Court that the appellant accused has expired in his native State Bihar. The Court thereafter passed the order to see that surety is brought to book and the advocate who had appeared for the surety also should be asked to explain as to how they had identified the surety at the time of executing the bail bond. One Mr. Ambaram Nagindas Rana had executed bail bond in favour of the appellant accused, but today the Court is informed through ld. APP Mr. Desai that surety Mr. Ambaram N.Rana has expired way back in the month of December 2006 at Surat. The zerox copy of the death certificate is also produced and the papers received by the Court through FAX from the Sessions Court, Surat are very well available on record. One letter is addressed to the ld. Principal Sessions Judge written by PI, Udhana Police Station, Surat. There is one statement of wife of deceased Ambaram Nagindas Rana (surety) and there is also death certificate No.0111031 dated 17.01.2007. So, it is legally not

possible for the Court to impose any penalty on the surety or in the same way no action can be taken against the lawyer because the identification made by the lawyer is automatically found genuine.

2. The Court, unless is satisfied that the appellant accused has expired, appeal can not be treated as abated. For that, ld. Counsel Mr. Ramakrishnan ought to have produced the death certificate of the appellant accused. Mr. Ramakrishnan is appearing in the matter on the instructions of Gujarat High Court Legal Aid Committee and he has not been provided with such certificate by the Legal Aid Committee. As there is no adequate satisfactory evidence on record to show that the appellant accused had died, the appeal shall have to be heard on merits and, therefore, the same is taken up for final hearing today.

3. Mr. Ramakrishnan, ld. Counsel appearing for the appellant accused and ld. APP Mr. Desai has taken me through the relevant documents including the charge exh.5 and the evidence of prosecution witnesses examined. According to Mr. Ramakrishnan, seizure of muddamal article i.e. 13 kg. of Ganja can not be said to have been proved and, therefore, the accused ought to have been acquitted. The arguments of Mr. Ramakrishnan is based on only one point i.e. incorrect appreciation of evidence including seizure panchanama and probability of false implication of the accused.

4. According to ld. APP Mr. Desai, the order of conviction is based on sound reasons and the ld. Trial Judge has rightly appreciated the evidence. It has come on record by legal evidence that the accused Sarjunsingh was intercepted by Udhana police on 20.11.1998 immediately after mid-night of 19.11.1998. The police had received information that the accused is likely to pass through a particular area and, therefore, the preparation to intercept the accused was made and even a scientific officer was also requested to join police so in case of necessity, preliminary test immediately on the spot can be carried out qua the prohibited substance Ganja. So, this is a case where the accused was intercepted and found with possession of about 13 kg. of Ganja. So, there was no reason for the trial Court to record a finding that the recovery of muddamal Ganja from the accused is not a genuine recovery. There was no reason for PW Gulam Mohd. To tell a lie who is an independent officer and has no relation or connection whatsoever with the police department to help the police in a fake raid for recovery of muddamal Ganja.

5. The quantity of Ganja recovered is about 13 kg. And it is not that easy for the police to plant such a big quantity in the hands of a person if he is simply a passer-bye.

6. Evidence of PW Nos. 1 & 2 proves satisfactorily that the substance found in possession of the accused

was a prohibited substance Ganja and necessary scientific date has also been brought on record by these two witnesses namely PW No.1 Mr. Ravindra Mangubhai Chaudhary, Scientific Officer serving with FSL, Surat and PW No.2 Mr. Vipul Bakulchandra Pandit who has proved the biological examination carried out by FSL produced vide exh.17. This PW No.2 Mr. Vipul Pandit was serving as Assistant Director-cum-Chemical Analyzer, Surat. He had also certified that muddamal was received by him in a sealed condition as Ganja. The document exh.39 also shows that the accused was given receipt of the muddamal article seized from him and the signature of the accused has been proved by the Seizing Officer i.e. PI, Udhana Police Station.

7. The police was supposed to record the information received in writing and was under statutory obligation to inform the superior on the success of the raid. This legal obligation has been satisfactorily complied with by the prosecution, is the say of Mr. Desai and in support of this submission, he has relied on the documents exh.37, 38 & 39. There is sufficient evidence as to the recovery of muddamal and so also about the panchanama drawn by the Seizing Officer on the spot.

8. It is rightly submitted by ld. APP Mr. Desai that this Court by adopting reasons assigned by the ld. Trial Judge can uphold the finding of guilt.

9. True it is that while dealing with the appeal preferred under sections 374 read with 386 of the CrPC, the appellate court can evaluate the evidence afresh and can even re-write the judgment, but while confirming the order of conviction, it is not always necessary to assign same reasons in a different or distinct manner. Plain reading of the judgment takes me to a conclusion that it is a sound and reasoned order of conviction and it is not possible for the Court to reach to a conclusion that the evidence as to recovery of muddamal from the accused has not been correctly appreciated nor it is possible to hold that the mandatory provisions of section 42 of the NDPS Act was not complied with by the Seizing Officer. The ld. Trial Judge has also discussed the technical and scientific aspect as to the muddamal article seized and evidence given by three scientific officers including the officer who had carried out initial examination of muddamal when the same cam to be seized. In my view, there is no perversity or illegality in the finding recorded by the ld. Special Judge. The period of punishment imposed is also adequate and in accordance with the scheme of NDPS Act. For short, there is no merit in the present appeal and the same requires to be dismissed.

10. In the result, the present appeal is hereby dismissed. The impugned judgment & order of conviction and sentence passed by the ld. Trial Judge is hereby confirmed.

[C.K. BUCH, J]

*rawal